

ORDINANCE NUMBER 93-39

AN ORDINANCE AMENDING AND RESTATING LEE COUNTY ORDINANCE NO. 88-43, GOVERNING THE REGULATION AND DISPOSAL OF GARBAGE, REFUSE, TRASH, RUBBISH, LOST OR ABANDONED PROPERTY OR INOPERABLE VEHICLES BY: PROHIBITING THE DUMPING OF SUCH MATERIAL ON PRIVATE PROPERTY; PROVIDING FOR REMOVAL OF ACCUMULATIONS OF REFUSE, TRASH, RUBBISH, LOST OR ABANDONED PROPERTY OR INOPERABLE VEHICLES; AMENDING THE DEFINITION OF NUISANCE ACCUMULATION; PROVIDING FOR A DEFINITION OF INOPERABLE VEHICLE; PROVIDING FOR PROSECUTION BEFORE A HEARING EXAMINER; PROVIDING FOR PENALTIES; PROVIDING FOR REPEALER; PROVIDING FOR CONFLICTS, SEVERABILITY AND INCLUSIONS IN CODE AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners is the governing body in and for Lee County, a political subdivision of the State of Florida; and

WHEREAS, the Board finds that the unincorporated areas of Lee County have been blighted by accumulations of abandoned or lost personal property, trash, rubbish, garbage, refuse and inoperable vehicles located on private property and that such accumulations threaten the health, safety and welfare of the public by encouraging the breeding of vermin and insect pests, the creation of fire hazards and the creation of attractive nuisances as defined by law; and

WHEREAS, the Board further finds that such unabated accumulations on private property create a public nuisance which ~~cannot be satisfactorily abated by the enforcement of existing~~ statutes and ordinances; and

WHEREAS, the Board further finds that removal of such accumulations on private property is in the public interest; and

WHEREAS, Chapter 125, Florida Statutes, authorizes the Board of County Commissioners of Lee County, Florida, to adopt and enforce laws for the protection of the public health, safety and welfare.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA:

SECTION ONE: PURPOSE, INTENT AND SCOPE: The purpose of this ordinance is to provide an effective procedure to promptly notify landowners of the existence of nuisance accumulations of abandoned or lost personal property, trash, rubbish, refuse, ~~or~~ garbage or inoperable vehicles located on their private property. This ordinance is intended to direct and provide for the removal of nuisance accumulations on private property in a timely manner to preserve the health, safety and welfare of the citizens of Lee County and to preserve and enhance the aesthetic value of the unincorporated areas of Lee County. Also, this Ordinance is intended to amend, restate and replace Lee County Ordinance No. 88-43, except as to any violation of Lee County Ordinance 88-43 which occurs prior to the effective date of this Ordinance; which violations shall be adjudicated pursuant to Ordinance 88-43.

SECTION TWO: DEFINITIONS: For purposes of this ordinance, the terms listed below shall have the following meanings unless otherwise specifically stated. When not inconsistent to the

context, words used in the present tense include the future, words in the plural include the singular and words in the singular number include the plural. The word "shall" is always mandatory and not merely discretionary.

(1) LOST PROPERTY - means all tangible personal property which:

(a) Does not have an identifiable owner; and

(b) Is in a substantially operable, functioning condition or which has an apparent intrinsic value to the rightful owner; and

(c) Has been mislaid on private property.

(2) GARBAGE - means any accumulation of animal, fruit or vegetable waste resulting from the preparation, use, cooking, processing, handling, sale, consumption, serving or storage of meats, fish, fowl, fruits, and vegetables or other matter which is subject to decomposition, decay, putrefaction or the generation of noxious or offensive gases or odors, or which, during or after decay, may serve as breeding or feeding materials for insects and animals.

(3) ABANDONED PROPERTY - means all tangible personal property which does not have an identifiable owner and which has been disposed of on private property in a wrecked, inoperative or ~~partially dismantled condition~~ or which has no apparent intrinsic value to the rightful owner.

(4) PUBLIC PROPERTY - means lands and improvements owned by the Federal Government, the state, the county, or a

municipality and includes sovereignty-submerged lands located adjacent to the county, buildings, grounds, parks, playgrounds, streets, sidewalks, parkways, rights-of-way, and other similar property.

(5) NUISANCE ACCUMULATIONS - means garbage, refuse, trash, rubbish, inoperable vehicles, or abandoned or lost property which is located on private property where the Lee County Zoning Ordinance does not permit disposal of such items.

(6) PRIVATE PROPERTY - means privately owned lands and improvements to land located within the unincorporated areas of Lee County.

(7) REFUSE - means a combination of rubbish and garbage.

(8) RUBBISH - means any solid waste accumulation of metal, metal products, minerals, chemicals, rocks, building rubble, cement, asphalt, tar, oil, grease, glass, crockery, rubber, rubber tires, bottles, cans, lumber, sawdust, or other waste materials.

(9) TRASH - means an accumulation of materials which does not meet the definitions of "abandoned property", "lost property", "garbage", "refuse" or "rubbish" and which may have some real or perceived value to the owner of private property ~~upon which it is located but which~~ constitutes by its existence a nuisance in that it devalues the underlying or adjacent property, creates a public nuisance, nuisance per se, or attractive

nuisance as defined by law, or threatens the public health, safety and welfare.

(10) Inoperable Vehicle

Car, truck, trailer, recreational vehicle and the like, which is not readily able to be driven or otherwise used or operated in its designed capacity, including but not limited to, current registration, if applicable.

SECTION THREE: NUISANCE ACCUMULATIONS ON PRIVATE PROPERTY:

(1) Nuisance Declared. It is hereby declared by the Lee County Board of County Commissioners that nuisance accumulations on private property shall constitute a public nuisance, subject to immediate abatement as provided by this ordinance or by any other remedy in law or equity, if:

(a) The private property is not:

(i) a legally permitted junkyard, automobile wrecking or wrecking yard or sanitary landfill as defined and regulated by the Lee County Zoning Ordinance or any other applicable ordinance or;

(ii) zoned or permitted by special permit or variance to allow such nuisance accumulations; and

(b) The nuisance accumulation impairs the economic value of the underlying or adjacent property, creates a danger to the public health, safety and welfare, constitutes an attractive nuisance as defined by law, or creates a fire hazard; and

(c) The accumulation is not made as a part of a

regularly scheduled garbage removal program or service.

(2) Investigating and Enforcing Authority. The Director of the Division of Codes and Building Services or his designated deputy (referred to hereafter as the "Director") is empowered to investigate and enforce the provisions of this ordinance in regard to the disposition of nuisance accumulations on private property. The Director is hereby directed and empowered to inspect private property where a nuisance is suspected to exist and to receive all complaints of a violation of this section. The Director is responsible for providing notice to all land owners affected by operation of this section and shall take any other action necessary to enforce this ordinance.

(3) Abatement Procedure. When the Director has determined that a violation of this ordinance exists, the owner of the underlying private property shall immediately remove or cause to remove and properly dispose of the nuisance accumulation.

(a) The Director is empowered to inspect lands, within the parameters of law, on which a nuisance or violation of this ordinance is suspected to exist. In the event county inspection reveals the presence of a nuisance, the Director shall ~~notify the property owner or~~ owners of record by registered or certified mail, return receipt requested, of the violation. When notice by mail would not be effective, the Director shall provide notice of the violation by hand delivery or any other legally

cognizable method of providing notification. If mailed, notice shall be sent to the last available address of the owner or owners of record as found in the Lee County public records and tax rolls. The notice shall advise the owner of an alleged violation the right to a hearing and shall give the owner a period of time in which to abate the violation by removing the nuisance accumulation. If notice is provided by mail or hand delivery the owner shall have twenty-one (21) days from the date notice is received to abate the nuisance by removal and proper disposal or request a hearing as provided in paragraph (4) hearing the owner shall have twenty-one (21) days from the last date of publication if notice is provided by publication to abate the nuisance by removal and proper disposal or request a hearing as provided in paragraph (4) hearing

(b) Upon expiration of the period given to abate the violation twenty-one day period, the Director shall re-inspect the described premises. If the Director determines that the subject parcel of land still has not been properly cleared or that the nuisance accumulation has not been properly disposed of after the owner has been notified of the violation as provided above, then the Director may forthwith abate the nuisance. ~~In addition to or~~ in lieu of abatement the Director may, at his sole election, seek imposition of the civil and criminal penalties against the owner set forth in Section Five

~~six~~ of this ordinance. The Director's election to abate a nuisance as provided herein shall not act to bar him from also seeking the imposition of penalties.

(c) If the Director elects to abate the nuisance, the Director shall, through his agents or contractors, be authorized to enter upon the property and take such steps as are reasonably necessary to abate the nuisance, however, Lee County shall not be required or obligated to have any parcel of land cleared. ~~(ix)~~ As soon after abatement as feasible, the County's cost to clear the parcel and properly dispose of the nuisance accumulation, including administrative and operating costs, shall be calculated and ~~reported by the Director to the Chairman of the Lee County Board of County Commissioners.~~ ~~(ix)~~ a bill representing the entire cost of abatement shall be prepared and forwarded to the owner at the owner's last known address. The bill shall provide full detail of the services rendered and costs incurred in abating the nuisance. The bill shall demand payment within twenty-one (21) days of the date the bill is mailed. Upon expiration of the twenty-one (21) day grace period, the Director shall submit a list of all unpaid bills for the abatement of nuisance accumulations to the Chairman of the Board of County Commissioners. Thereupon, the Chairman, ~~of the Board of County Commissioners~~ vested with the full authority of the Board, may, by resolution on behalf of the Board, levy a special assessment lien in the amount of the full cost incurred against such parcel.

Such resolution shall describe the land and show the total cost of abatement. Until payment is completed, the assessment shall be a legal, valid and binding obligation upon the property. A base assessment amount will be established and set in accordance with the Lee County Administrative Code and is hereby declared to be necessary for the purpose of inspection, administration and enforcement of this section.

~~(iii)~~As soon as possible after the assessment has been made by resolution of the Board of County Commissioners, a certified copy of the resolution shall be recorded in the official records of Lee County in the office of the Clerk of the Circuit Court in and for Lee County, Florida. The special assessment lien shall become effective and the assessment due and payable to Lee County on the date a copy is recorded by the Clerk of the Circuit Court. ~~Following recording the Clerk shall mail a Notice of Assessment to the owner's last known address. Thirty (30) days after the date of mailing of the Notice of Assessment by the Clerk,~~ Interest shall begin to accrue at the rate of twelve percent (12%) per annum on the unpaid balance of the assessment. The assessment lien shall run with the land and shall be satisfied upon sale, transfer, or any other disposition of the property subject to the lien. Any assessment together with interest ~~thereon may be enforced by civil action in the~~ a Lee County Court of appropriate jurisdiction. Liens shall continue in full force ~~from January 1 of the year the assessment was levied~~ until discharged by payment.

(ix) // The Director shall mail a second notice to the last known address of the record owner or owners of each parcel of land described in the resolution, by certified mail, return receipt requested. // The notice shall be in substantially the following form:

NOTICE

To: // ////////////////////////////////////
 Address: // ////////////////////////////////////
 Property: // ////////////////////////////////////
 Date of Mailing: // ////////////////////////////////////
 As the record owner of the property above described, you are hereby advised that the Board of County Commissioners of Lee County, Florida, through the Director of the Division of Codes and Building Services, did on the ////// day of //// 19////, order the abatement of a certain nuisance existing on your property described above. // You were previously sent notice that the nuisance consisted of:

(here describe briefly)

You failed to abate the nuisance; it was therefore abated by Lee County at a cost of \$////////// such cost plus an administrative and operating fee of \$////////// has been levied against the property described above by resolution of the Board and became a lien on the property described as of the date

of recording the resolution in the public records of Lee County,
Florida. Interest shall begin to accrue at the rate of twelve
(12%) percent per annum thirty (30) days from the date the Clerk
of the Circuit Court mails you notice of the assessment. To
avoid additional expense, you should immediately pay such
assessment to the Lee County Division of Codes and Building
Services, Fort Myers, Florida.

Board of County Commissioners
of Lee County, Florida

By: _____
Chairman

Within twenty-one (21) days after the
date the initial notice of a nuisance is:

(a) Received by the owner, if notice is mailed or
hand-delivered, or;

(b) Within twenty-one (21) days of the last date
of publication if notice is provided by publication;

the owner of the property may request a hearing to show that the
condition alleged in the notice does not exist or that such
condition does not constitute a nuisance. All requests for
hearings shall be in writing and shall be directed to the
Director. Notice of the right to such hearing shall be included
in the initial notice of a nuisance accumulation provided to the
landowner. Failure to request a hearing or to timely appear
for the hearing when scheduled shall be deemed a waiver of the
landowner's right to a hearing.

(4) Hearing. If the owner has failed to abate the alleged violation of this Ordinance by removal of the nuisance accumulation, the owner shall be subjected to Code Enforcement hearing procedures as set forth in Florida Chapter Section 162, Lee County Ordinance No. 90-01, and Lee County Administrative Code Section 2-14, as each may be amended from time to time.

THE/DIRECTOR/SHALL/GIVE/THE/LAND/OWNER/SEEKING/A/HEARING/Written notice//of/the/date/and/location/of//the/scheduled/hearing//ALL INITIAL//hearings/SHALL/be/before/THE/LEE/COUNTY/BOARD/of/COUNTY Commissioners////AY//THE/hearing//THE/COUNTY/and//THE/property owner//may/introduce/such/evidence/as//is/deemed/necessary//ALL decisions//of/THE/BOARD/of/COUNTY/Commissioners/WITH/REGARD//TO THIS//SECTION/SHALL/be/FINAL//Appeals/of/a/BOARD/decision/SHALL be//TO/DIRECTLY/COUNTY//Any//appeal/SHALL/be/FILED//WITHIN/THIRTY (30)//days/of//THE//date/THE/BOARD//renders/judgment//FOLLOWING expiration//of/THE//THIRTY//day/appeal/period//THE/DIRECTOR/may proceed//TO//abate//THE//nuisance//or//seek//THE//imposition//of penalties//as/directed/by/THE/BOARD/of/COUNTY/Commissioners/and provided/below/

(5) Budget of Funds. Clearing of accumulations from private lands as set forth herein is declared to be for a County purpose and the Board of County Commissioners of Lee County is authorized to budget in order to set up funds for the carrying out of the purposes of this ordinance. Funds/received/by/THE COUNTY//under/THE/terms/of/THIS/ordinance//SHALL/be/deposited/in THE/unincorporated/area/MSTU/fund/

SECTION FOUR: PENALTIES: Any person, organization, society, association or corporation, or any agent or representative thereof, who violates any provisions of this ordinance shall, upon conviction, be subject to the following penalties:

(1) Criminal Penalties

(a) A fine not to exceed ~~Five~~ Two Hundred Fifty Dollars ~~(\$500.00)~~ (\$250.00) per day; or

(b) Imprisonment in the County Jail for a term not exceeding sixty (60) days; or

(c) By both a fine and imprisonment.

(2) Civil Penalties

(a) The County shall be entitled to injunctive relief to enjoin and restrain any person from violating the provisions of the ordinance; and

(b) Prosecution before the Lee County Hearing Examiner ~~Code/Enforcement/Board~~.

(c) Any other relief available pursuant to law. Each day that a nuisance accumulation continues to exist after the expiration of the period given for abatement by the Hearing Examiner ~~twenty-one (21) day grace period from the date the notice was received or the last date of publication if notice was published~~ shall constitute a separate offense, punishable as provided above.

SECTION FIVE: SEVERABILITY: It is declared to be the

legislative intent that if any section, subsection, sentence, clause or provision of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate provision and the remaining provisions of this Ordinance shall not be affected. It is hereby declared to be the legislative intent of the Board of County Commissioners that this ordinance would have been adopted had such ~~unconditional~~ unconstitutional provision not been included therein.

SECTION SIX: INCLUSION IN CODE: It is the intention of the Board of County Commissioners that the provisions of this ordinance shall become and be made a part of the Lee County Code; and that the sections of this ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section", "article", or such other appropriate word or phrase in order to accomplish such intentions.

SECTION SEVEN: CONFLICTS: Whenever the requirements or provisions of this ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements shall apply.

SECTION EIGHT: EFFECTIVE DATE: This Ordinance shall take ~~effect immediately upon receipt by~~ the Board of County Commissioners of Lee County, Florida, of the official acknowledgment from the Secretary of State of Florida that it has been filed with that office.

This Ordinance is adopted by the Lee County Board of County Commissioners upon a motion by Commissioner Douglas St. Cerny and seconded by Commissioner Franklin Mann and, upon a poll of the members present, the vote was as follows:

JOHN MANNING	Absent
RAY JUDAH	Absent
DOUGLAS ST. CERNY	Aye
JOHN ALBION	Aye
FRANKLIN MANN	Aye

DONE AND ADOPTED this 1st day of December, 1993.

ATTEST: BOARD OF
CHARLIE GREEN, CLERK

By: [Signature]
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: [Signature]
Chairman

Approved As To Form

By: [Signature]
Office of County Attorney

(6303J/O)